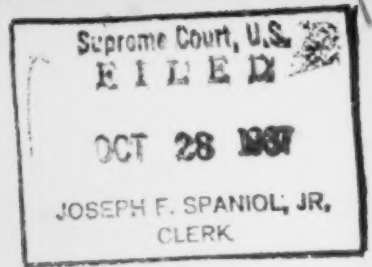


87-520



No.

**In The  
Supreme Court Of The United States**

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OCTOBER TERM, 1987

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**GAIL HANCICH,**  
*Petitioner,*

v.

**MICHAEL GOPOIAN, ET AL,**  
*Respondents.*

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**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE UNITED STATES**

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## QUESTION PRESENTED FOR REVIEW

Whether the Summary Process Statutes of the State of Connecticut, as applied in the evicting of the Petitioner, GAIL HANCICH, from a mobile home park in Wallingford, Connecticut, constitutes an action taken under color of state law which will deprive the Petitioner of property in violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

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**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE UNITED STATES  
COURT OF APPEALS SECOND CIRCUIT**

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The Respondents ALBO, INC. and ROBERT JAGODA respectfully pray that a writ of certiorari not issue to review the judgment of the United States Court of Appeals, Second Circuit entered on April 8, 1987.

**OPINION BELOW**

The United States Court of Appeals, Second Circuit entered its Memorandum Decision affirming the Respondents' motion to dismiss Petitioner Hancich's complaint for failure to state a claim. A copy of the memorandum opinion is attached as Appendix I of the Petitioner's petition.

## **JURISDICTION**

The judgment of the United States District Court for the District of Connecticut was entered on May 29, 1986. The judgment of the United States Court of Appeals for the Second Circuit was entered on April 8, 1987. The jurisdiction of this court is invoked by the Petitioner under the Fifth and Fourteenth Amendments to the Constitution and 42 U.S.C. § 1983.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

### **UNITED STATES CONSTITUTION, AMENDMENT V**

Nor shall any person . . . be deprived of life, liberty or property without due process of law.

### **UNITED STATES CONSTITUTION, AMENDMENT XIV**

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.



## STATEMENT OF THE CASE

In the spring of 1982 the Petitioner entered into an oral month-to-month lease with the Respondent, Michael Gopoian, through his agent Albo, Inc. and his leasing agent, Robert Jagoda. The lease was for the rental of Lot 76 in Gopoians Mobile Home Park in Wallingford, Connecticut. She took possession, which possession was interrupted almost immediately when the Quinnipiac River overflowed its banks and rendered it uninhabitable for two-and-one-half months. During this time, she tendered no rent to the Respondent or his agents. When she later attempted to tender the back rent due, the Respondents refused to accept the same, having previously served her with a notice to quit and an eviction notice based upon her failure to pay her monthly rent during her absence from the mobile home park. Petitioner has brought suit against MICHAEL GOPOIAN, individually, his wife, CATHERINE GOPOIAN, individually, ALBO, INC. as agent corporation and ROBERT JAGODA, individually. She contends that as a result of the notice to quit and eviction action she will have lost an equitable property interest in her mobile home amounting to the difference between the value of her mobile home on the lot and the value of the same off the lot. This she claims is a taking in contravention of the due process requirements and the equal protection clause of the Fifth and Fourteenth Amendments of the United States Constitution. Eviction proceeding has been stayed by the state court pending a determination in this action.

The United States District Court for the District of Connecticut granted Respondents' motion to dismiss her action for failure to state a claim. Subsequently, the United States Court of Appeals for the Second Circuit affirmed the judgment of the District Court.

## ARGUMENT

### I. THE CONNECTICUT SUMMARY PROCESS STATUTES AS APPLIED TO MOBILE HOME PARKS, WHICH DO NOT ALLOW THE PETITIONER TO PLEAD THE DEFENSE OF UNINHABITABILITY IN AN ACTION FOR POSSESSION FOR NONPAYMENT OF RENT, DO NOT DEPRIVE THE PETITIONER OF HER PROPERTY IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION.

Connecticut General Statutes § 21-80 (APPENDIX XII of Petitioner's Brief) provides that the owner of a mobile home park may maintain a summary process action against a resident who owns his mobile home for nonpayment of rent, among other reasons. In such a case Connecticut's summary process statutes do not permit the Defendant to raise defenses such as retaliatory eviction or "diminution of value of a property interest due to a forced sale." The Petitioner in this case argues that her mobile home is worth more on the lot at the mobile home park than it is removed from the lot and that this difference in value is a property right. Thus, the Petitioner contends, her eviction from the mobile home park will result in the taking of her property in violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

In *Lindsey v. Normet*, 405 U.S. 56 (1972) this Court reviewed the Oregon Forcible Entry and Detainer statute which provided a procedure similar to Connecticut's summary process statutes. In finding the Oregon statute constitutional this Court stated:

"The Court has twice held that it is permissible to segregate an action for possession of property from other actions arising out of the same factual situation that may assert valid legal or equitable defenses

or counterclaims. In *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133 (1915) (Holmes, J.), the Court upheld against due process attack a Louisiana procedure that provided that a defendant sued in a possessory action for real property could not bring an action to establish title or present equitable claims until after the possessory suit was brought to a conclusion. In *Bianchi v. Morales*, 262 U.S. 170 (1923) (Holmes, J.), the Court considered Puerto Rico's mortgage law which provided for summary foreclosure of a mortgage without allowing any defense except payment. The Court concluded that it was permissible under the Due Process Clause to "exclude all claims of ultimate right from possessory actions," *id.*, at 171, and to allow other equitable defenses to be set up in a separate action to annul the mortgage.

Underlying appellants' claim is the assumption that they are denied due process of law unless Oregon recognizes the failure of the landlord to maintain the premises as an operative defense to the possessory FED action and as an adequate excuse for nonpayment of rent. The Constitution has not federalized the substantive law of landlord-tenant relation, however, and we see nothing to forbid Oregon from treating the undertakings of the tenant and those of the landlord as independent rather than dependent covenants" *Lindsey, supra*, at 67-68.

The Court in *Lindsey* also addressed the claim that the Oregon eviction statute was invalid on its face under the Equal Protection Clause:

"The objective of achieving rapid and peaceful settlement of possessory disputes between landlord and tenant has ample historical explanation and support. It is not beyond the State's power to implement that purpose by enacting special provisions applicable only to possessory disputes between landlord and tenant.

There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights of income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss and the tenant to unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property." *id* at 72-73.

In conjunction with Connecticut summary process statutes as applied to mobile homes, Connecticut General Statutes § 21-79 (See APPENDIX X of Petitioner's Brief) provides that a resident may sell his mobile home to another party which second party shall be allowed to assume the resident's lease at the mobile home park, upon meeting certain minimum standards of safety, sanitation and aesthetics. Petitioner's contention in her petition that she is not a "resident" and is therefore not afforded this protection is based on a misreading of Connecticut General Statutes § 21-64 (5) (APPENDIX XI of Petitioner's Brief).

"Resident" is defined in that statute as "a person who owns, or rents and occupies, a mobile manufactured home in a mobile manufactured home park;". Certainly the Petitioner in this case is a person who owns a mobile manufactured home which is located in a mobile manufactured home park and is therefore by definition a "resident." Accordingly, the Petitioner is entitled to the rights and protections provided to any mobile home resident under Connecticut General Statutes § 21-79.

It would be stating the obvious to note that, since the institution of the summary process action in the Connecticut Housing Courts in 1982, the Petitioner has made no effort to sell her mobile home to another party in order to realize the perceived increase in value of her mobile home in the park, nor has she attempted to relocate her mobile home in another park in order to protect her property rights.

In her brief Petitioner quotes at length from a *Mobile Home Task Report* (APPENDIX III of Petitioner's Brief) which report cites the scarcity of mobile home parks in the State of Connecticut and stresses the need for changes in the local zoning ordinances to accommodate more mobile home parks. Even if these conclusions are accurate it does not necessarily make this case worthy of the consideration of this Court.

"We do not denigrate the importance of decent, safe and sanitary housing. But the Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy the real property of his landlord beyond the term of his lease without the payment of rent or otherwise contrary to the terms of the relevant agreement. Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom." *Lindsey, supra*, at 74.

## CONCLUSION

The Petitioner has failed to show that the Connecticut summary process statutes, as applied to mobile home parks, deprive her of her constitutionally protected property rights in contravention of the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Petitioner has failed to state a claim upon which relief could be granted.

Accordingly, this Petition for a Writ of Certiorari should be denied.

RESPECTFULLY SUBMITTED,  
RESPONDENTS, ALBO, INC. and  
ROBERT JAGODA

BY THOMAS T. LONARDO,  
Their Attorney

